ONTARIO SECURITIES COMMISSION
Volume 2, Issue 2

PERSPECTIVES

inside...

SPRING 1999

FEATURE

Update on Take Overs/M&As

On January 18, 1999, the OSC created a new Take Over/Issuer Bids, Mergers & Acquisitions team within the Corporate Finance Branch. The work of the new team previously was carried out in the General Counsel's Office.

"In the longer term, the M&A team will be focusing on the need for legislative reform."

The Commission believes a specialized, transactional and policy team is necessary given the significant volume of M&A activity and the need for expert and timely regulatory oversights in this area.

The following reviews the core functions of the team, its key projects for the future, and significant developments since it was created:

- administering Part XX of the Securities Act dealing with take over/issuer bids and, in particular, reviewing and considering s.104 applications and making recommendations to the Commission regarding the appropriate exercise of discretion in respect of such applications;
- processing applications for relief, where warranted, under OSC Policy 9.1;

(continued on page 10)

INDEX


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POLICY PROFILES

An overview of policy initiatives and where they stand in the policy development and implementation process.

Mutual Fund Rules

The Canadian Securities Administrators (CSA) has published a Notice of Proposed Changes to proposed National Instrument and Companion Policy on Mutual Funds (NI 81-102 and 81-102CP). The changes are based in part on comments received after the National Instrument was published for the first time in 1997. The proposed National Instrument and Companion Policy are a reformulation of National Policy Statement No. 39.

The Notice, published in a special OSC Bulletin on March 19 (22 OSCB (Supp)), summarizes the changes. One change involves permitting mutual funds to directly use swaps, as suggested in comments received by the CSA. However, the CSA proposes that several significant issues raised during the comment period be addressed in a parallel process to allow for sufficient public comment and industry consultation. The CSA intends to publish proposed rules late in 1999 or 2000 as amending instruments to the National Instrument.

Among the issues to be addressed in this way are: securities lending by mutual funds and the use of repurchase agreements; a standardized regime for the structure of so-called "funds of funds"; timing of transfers among financial institutions and among mutual funds; principal trading in securities between mutual funds and entities related to the manager of the mutual funds; acquisition of securities by mutual funds from underwriters related to the mutual fund manager; and inter-fund trading of securities.

For more information, please call **Rebecca Cowdery**, **Manager, Investment Funds**, (416) 593-8129, or **Paul Dempsey**, **Legal Counsel**, (416) 593-8091.

22 OSCB March 19 Special Issue

Mutual Fund Prospectus Disclosure

A revised draft of the proposed National Instrument 81-101 on Mutual Fund Prospectus Disclosure has been issued for industry and public comment. It incorporates a number of changes made in response to extensive industry testing, consumer research and public comment.

In addition to receiving general comments on the original proposed National Instrument published for comment in July 1998, the CSA obtained specific consumer input in a number of innovative ways. The CSA worked with the Investment Funds Institute of Canada (IFIC) and six mutual fund companies to test market the fund summary concept. IFIC also engaged a research company to assess whether the proposed disclosure concept met the needs of investors. As well, the OSC engaged another research company to conduct a series of focus groups with mutual fund investors.

The CSA also took into account three significant publications released during the comment period – The MacKay Task Force Report on the future of the Canadian Financial Services Sector, the Kirby Report on the Governance Practices of Institutional Investors and Investment Funds in Canada and Consumer Protection Strategies for the Millennium.

The CSA is proposing a number of changes in the new Notice. Among the key changes:

In order to continue to use current terminology, the terms "fund summary" and "fund prospectus" used in the 1998 materials have been replaced with the terms "simplified prospectus" and "annual information form".

The annual information form should provide disclosure about different matters than the simplified prospectus, such as information concerning the internal operations of the manager of the mutual fund. This approach responds to consumer research comments that fund prospectuses (now annual information forms) may not receive wide distribution, and that it was therefore unnecessary to restructure the existing AIF to accommodate wide circulation. As well, it was noted that investors would not read documents that appear to repeat information.

A number of changes have been made reflecting concerns that the proposed fund summary would be too long for investors if it covered a number of funds. The proposed National Instrument therefore includes several structural changes:

1) **Formal division of a Simplified Prospectus into two parts**. Under the 1998 Draft Instrument and Draft Forms, a fund summary would contain a section on general information about mutual funds and the mutual fund family, and a fund-specific section describing each mutual fund. This concept has been continued, with the terminology changed to make the distinction clearer. Under the proposed National Instrument, a simplified prospectus consists of two sections. Part A provides introductory information about the mutual fund, general information about mutual funds and information applicable to the mutual funds managed by the mutual fund organization. Part B contains specific information about the mutual fund.

2) **Clarification that a Simplified Prospectus and Annual Information Form pertain to only one mutual fund.** The proposed National Instrument and Simplified Prospectus Form now make clear that a simplified prospectus pertains to one mutual fund and use the term "multiple Simplified Prospectus" to refer to a document that contains more than one simplified prospectus.

3) **Consolidation of Simplified Prospectuses.** A simplified prospectus could be consolidated with one or more simplified prospectuses to form a "multiple Simplified Prospectus" unless the Part A section, the general information section, of each simplified prospectus is not substantially similar. This option would be available generally to mutual funds in the same family that are administered by the same entities and operated in the same manner.

4) **Permission to Package Multiple Simplified Prospectuses to Better Meet Investors' Needs.** The Part B section of a multiple Simplified Prospectus could be bound separately from the Part A section, as could each Part B section that pertains to a different mutual fund. This would permit an investor to receive a Part A section that describes the mutual fund family and organization generally, and only the Part B section or sections (fund-specific disclosure) that relate to the mutual fund or funds in which the investor is interested.

5) **Clarification of Delivery Obligations.** A mutual fund can meet its obligations to deliver a prospectus by delivering the Part A section of the multiple simplified prospectus and the Part B section that pertains to the mutual fund being purchased.

6) **Flexibility.** A number of changes have been made to the proposed National Instrument and Forms to ensure that mutual fund organizations have the flexibility to create documents that are accessible and easily-read and understood by investors.

For more information, please call **Rebecca Cowdery, Manager, Investment Funds**, (416) 593-8129, or **Anne Ramsay, Accountant**, (416) 593-8243.

22 OSCB April 30, page 2605

OSC REPORTS

An inside look at Commission developments and projects that will have an impact on the investment community.

OSC Issues 1999/2000 Statement of Priorities

The OSC has published its annual Statement of Priorities.

The previous year, 1998/1999, was the Commission's first full year of operation funded through fees collected from market participants. During that period, the OSC restructured its operations, creating Capital Markets and Corporate Finance branches with new organizational units focused on markets regulation, investment funds, continuous disclosure and mergers and acquisitions. The Commission also increased staffing to fulfill its mandate.

The Commission will continue to recruit aggressively in the 1999/2000 fiscal year, committing its resources to the following key priorities:

- Provide leadership in readying the capital markets for Y2K; support industry testing and contingency plan development; perform follow up reviews of registrant and issuer disclosure programs.
- Significantly increase resources in Capital Markets, Corporate Finance and Enforcement to provide additional focus on monitoring of compliance with disclosure requirements by market participants and increased emphasis on case assessment, investigations and enforcement.
- Lead initiatives to redefine the mandates and activities of all Canadian regulators of financial service providers. Contribute to increased coordination of financial services regulation within Ontario through participation in Ontario Council of Financial Regulators.
- In conjunction with CSA partners address issues arising from the proposed restructuring of Canadian exchanges.
- Provide an effective regulatory regime for existing, alternative, and emerging trading systems including the Internet.
- Complete fee review with CSA partners and begin to implement restructured fees to bring revenues and costs into closer alignment,
- Support the establishment and recognition of the Mutual Funds Dealers Association and seek regulatory options to improve the governance of mutual funds.
- Participate actively in international organizations (e.g. IOSCO) to represent Ontario during the development of regulatory standards and approaches related to international capital markets.
- Propose reforms of prospectus and continuous disclosure requirements for mutual funds.
- Develop proficiency standards for financial planning and rules for implementation. For more information, please call **Mary Spencer, Director, Corporate Services**, (416) 593-8185 or **Robert Day, Manager, Business Planning and Reporting**, (416) 593-8179.

22 OSCB April 9, page 2131

New Securities Advisory Committee Members

In March, the OSC invited applications for positions on the Securities Advisory Committee (SAC). SAC provides advice to the Commission and staff on a variety of matters including legislative and policy initiatives, important capital markets trends, and identifies issues that are of importance to the Commission and staff.

Eleven new members will join the Committee this year. The new members who will be joining immediately are: **Connie Sugiyama, Mark DesLauriers, Patricia Olasker, Simon Romano, Grant Vingoe.**

Other new members will join in October in order to stagger the start dates and ensure a smooth transition. They are: **Jeffrey Kerbel, Paul Mingay, Ava Yaskiel, Ralph Shay, Jay Lefton, David McIntyre.**

Through SAC, the Commission will also be accessing the expertise of Linda Currie at Osler, Hoskin & Harcourt and John Hall of Borden & Elliot, where investment fund matters are referred to SAC.

The existing members of SAC will continue to serve on the Committee until October. They are: **Jonathan Lampe (Chairman), Richard Balfour, Craig Brod, Scott Freeman, Michael J. Lang, Margaret McNee, Michael C. Nicholas, Richard S. Sutin.**

The Commission thanks the current members of SAC for their dedication, advice and guidance over a number of years.

For more information, please call **Susan Wolburgh Jenah, General Counsel**, (416) 593-8245.

22 OSCB March 12, page 1607

OSC Reduces Fees

In keeping with its mandate for receiving self-funding status, the Ontario Securities Commission will implement a 10% across-the-board reduction in all fees which it charges to capital markets participants as of August 3, 1999.

When it became self-funding, the OSC pledged to reduce fees to a level which would bring revenues and expenditures into equilibrium. This will happen in stages and is to be complete by the end of 2001.

The 10% across-the-board fee reduction is the second step towards that end. The first step was the elimination effective September 1st, 1997, of the Secondary Market Fee and the fee for certain registration terminations and transfers which accounted for $2 million per annum in revenue reduction. Consequently, the net revenue generated for 1998/99 was $76.3 million against total OSC expenditures of $33.3 million. In addition to its capital and operating expenditures, the OSC set aside $7.5 million in a reserve fund.

The OSC is also currently developing and implementing a completely re-engineered fee schedule. In developing the new schedule, the OSC will address a range of issues including:

- better fee harmonization with other Canadian securities regulators;
- recognition of the concepts of Principal Regulator and Mutual Reliance;
- better alignment between fees charged and OSC expenditures. This will mean developing linkages between fees charged and "attributable overhead costs", for example Enforcement, Compliance, Take Over Bid Team, Inquiries Group etc.; and
- ensuring, to the extent possible, that each stakeholder, that is investors, issuers, and registrants, is paying a fair share of the costs.

For more information, please call **Mark Conacher, Director, Corporate Relations**, (416) 593-8073.

22 OSCB May 7, page 2804

IOSCO Hedge Funds Task Force

The OSC's Chair, David Brown, is leading an international regulatory task force examining regulatory issues relating to hedge funds.

The financial difficulties experienced in 1998 by Long Term Capital Management, a prominent hedge fund, have prompted regulators to consider whether there are any regulatory gaps relating to hedge funds and highly leveraged institutions. In response, the Technical Committee of the International Organization of Securities Commissions (IOSCO) formed a special Task Force, chaired by Mr. Brown. The Task Force includes representatives from 13 countries.

The Task Force is examining whether there is a need for enhanced internal control standards and risk management for securities firms, how to address the need for international regulatory consensus on these issues, how to deal with regulatory "haven" jurisdictions, and whether, and if so how, hedge funds should be subject to direct regulation.

The Task Force is scheduled to submit its report to the Technical Committee shortly.

For more information, please call **Tanis MacLaren, Special Advisor to the Chair**, (416) 593-8259, or **Tracey Stern, Legal Counsel**, (416) 593-8167

Investor Education Week Summary

Between April 25 – May 1, securities regulators in North, Central and South America marked the Second Annual Investor Education Week. Along with other Canadian Securities Administrators, Ontario observed two themes – Risk Factors Affecting Your Investments, and Teaching Our Children.

Among the week's events:

- the CSA released a Canada-wide survey on investor knowledge and behaviour;
- the OSC participated with investor associations, the Investor Learning Centre of Canada, and other community-based organizations such as public libraries, to present seminars in Niagara Falls, Markham, Ottawa and Toronto. This initiative will continue all year as the Commission conducts more regional investor outreach.
- seventeen staff volunteers went "back to school," teaming with TSE and IFIC representatives to present the Junior Achievement's Personal Economics course to grade seven students.
- Charlie Macfarlane, Executive Director and CEO of the OSC, led a student team in a Money Challenge competition at the TSE's Investor Fair Day;
- A website *www.yourmoney.ca* is designed to attract ongoing student "visits."

The Ontario campaign involved several organizations including: the Investment Dealers Association, the Canadian Securities Institute, the Investor Learning Centre of Canada, The Toronto Stock Exchange, the Canadian Investor Protection Fund, the Canadian Depository for Securities, the Investment Funds Institute of Canada, the Canadian Bankers Association, and the Institute of Canadian Bankers. The OSC also welcomed the participation in Investor Education Week activities by Junior Achievement of Toronto and York Region, the Toronto Board of Trade, the Small Investor Protection Association, and public libraries in Toronto and Niagara Falls.

For more information, please call **Nancy Stow, Manager, Investor Education**, (416) 593-8297.

Westlinks Resources

In April, Westlinks Resources Ltd. announced a controversial proposal to simultaneously pursue 40 hostile take over

bids. Although the proposal was withdrawn a few days after being announced, staff of the Ontario and Alberta Securities Commissions issued comments on the proposal because of market interest, and to clarify their views for other companies which might emulate the proposal.

The staff noted that under the plan, shareholders would have no idea what assets Westlinks would be composed of nor what value a Westlinks share would have upon completion of the offer. The staffs' view was that the proposal was structurally flawed for failing to recognize this fundamental concern. As well, they noted, given that concern, it would have been inappropriate to require 40 target companies to respond to this takeover bid.

Staff also commented that there are more appropriate ways to create a closed-end investment fund. They noted that through a prospectus with mutual fund-like disclosure, one can seek to raise funds to pursue a well-defined investment strategy, run by qualified portfolio managers.

For more information, please call **Stan Magidson, Director Take Over Bids, Mergers & Acquisitions Team** (416) 593-8124.

22 OSCB April 23, page 2404

The British Columbia Securities Commission & Global Securities Corporation

In July 1998, the British Columbia Court of Appeal struck down a section of the British Columbia Securities Act that authorizes the British Columbia Securities Commission to issue orders requiring the production of information or documents to assist regulators in other jurisdictions in the administration of their securities laws. The British Columbia Securities Commission sought and was granted leave to appeal the decision of the British Columbia Court of Appeal to the Supreme Court of Canada.

The Ontario Securities Commission has filed an application for leave to intervene in this matter in support of the British Columbia Securities Commission, on a number of grounds. In particular, the Ontario Securities Commission is seeking intervener status because it regards a similar section of its Securities Act as important to regulators in today's globalized markets, where information and funds move instantly across borders by means of the Internet and other electronic communication systems. Recently the Alberta Securities Commission also sought leave to intervene in this matter.

The Ontario Securities Commission expects to hear shortly whether its application for leave to intervene will be allowed by the Court.

For more information, please call **Susan Wolburgh Jenah, General Counsel**, (416) 593-8245.

OSC Creates Continuous Disclosure Team

As part of its commitment to increase resources as the market demands, the OSC has created a separate Continuous Disclosure team. The new team will be dedicated solely to handling continuous disclosure matters, in recognition of the increased activity in continuous disclosure in the market.

The OSC believes that the regulatory system should reflect the recent evolution in the capital markets. With the dramatic rise in secondary market trading, there should be a decreasing emphasis on episodic, transactional disclosure with a greater emphasis on an issuer's continuous disclosure base. Continued movement towards the implementation of an integrated disclosure system is consistent with the market reality that more and more investors are making investment decisions based on an issuer's continuous disclosure record.

For more information, please call **Heidi Franken, Manager, Disclosure Team** (416) 593-8249.

OSC Publishes Insider Reporting Guide

In order to improve the timeliness and quality of insider trade reporting, the OSC is publishing its first-ever Insider Reporting Guide.

The Guide sets out in plain English the requirements for Insider Reporting, including when and what transactions insiders must report, where and how reports should be filed, a step-by-step guide to completing the form, requirements for different securities and transactions, and common filing errors.

The Commission based the Guide on a similar work by the BC Securities Commission. The OSC believes that by helping insiders better understand the requirements under Ontario securities law, the Guide will encourage compliance and reduce errors and omissions in reporting.

Insiders are advised to comply with the reporting requirements to avoid possible enforcement consequences. It is imperative therefore that insiders take this obligation seriously.

The Guide will be available on the OSC website at *www.osc.gov.on.ca* or by calling (416) 593-3699.

For more information, please call **Paul De Souza**, (416) 593-8295.

"Know Your Client" Rule Under Scrutiny

A committee of discount brokers has asked regulators to eliminate the "Know Your Client" suitability rule for unsolicited trades. In a joint submission filed last October, the brokers say removing the rule would speed up some transactions,

cut costs, and level the playing field with US brokers not subject to a suitability rule. The OSC intends to look at this issue as part of the CSA's broad review of regulation. In considering this matter, regulators would balance issues such as the increasing sophistication of some investors, the growth of electronic trading, and the need to protect investors and ensure they are receiving appropriate advice.

For more information, please call **Randee Pavalow, Manager, Market Regulation**, (416) 593-8257.

Changes to Exempt Market Proposed

Following the 1999 Ontario Budget, the Ontario Securities Commission issued for public comment a concept paper, "Revamping the Regulation of the Exempt Market."

Ontario securities law allows two methods by which securities can be offered for sale: through a prospectus or by private placement. In the past a number of issuers, investors and their advisers have called for reform of the private placement regime. They have regarded it as unduly restrictive and, in some respects, unworkable.

Staff of the Commission, expanding upon the work of the Commission-appointed Task Force on Small Business Financing, are proposing an overall revamping of the regulation of the exempt market that would streamline the regulatory regime for private placements.

Four of the exemptions from the requirement for a prospectus – the private company exemption, the $150,000 exemption, the seed capital exemption and the government incentive security exemption – would be replaced with two new exemptions:

(1) The Closely-Held Issuer Exemption - This exemption would permit issuers to raise a total of $3 million, through any number of financings, from up to 35 investors without concern for the qualifications of the investors. No prospectus or other disclosure document would be mandated and issuers relying upon this exemption would be subject to very few securities regulatory requirements.

(2) The Accredited Investor Exemption - This exemption would permit issuers to raise any amount at any time from certain classes of investors (including prescribed institutions, persons and corporations with a certain net worth and the issuer's management) on the basis that these qualified persons and entities should be considered sophisticated and able to withstand financial loss. No offering memorandum or other disclosure document would be mandated, although it is contemplated that civil liability of a lesser standard than that imposed on prospectus offerings would apply to selling documents voluntarily delivered to accredited investors.

The proposal also includes a recommendation that only the issuer and its directors and officers be permitted to trade in securities of a closely-held issuer. Dealers would not be permitted to trade.

A registration exemption for trades in reliance upon the accredited investor exemption would be awarded to the issuer, its directors and officers, as well as dealers, subject to proficiency and capital adequacy requirements.

The concept paper appears on the OSC's Website at *www.osc.gov.on.ca* and was published in the OSC Bulletin on May 7, 1999. Interested parties are encouraged to provide written comments to the Commission by August 6, 1999.

For more information, please call **Margo Paul, Manager, Filing Team 1,** (416) 593-8136, **Janet Holmes, Sr. Legal Counsel,** (416) 593-8282, or **James McVicar, Legal Counsel**, (416) 593-8154.

22 OSCB May 7, page 2829

Bond Market Transparency

In order to establish broader market transparency in the government and corporate debt market, the OSC will review the status of transparency in bond trading.

At present there is a joint initiative of the Investment Dealers Association of Canada (IDA) and the Interdealer Brokers Association (IDBA) of Canada for a voluntary arrangement among IDA members and members of the IDBA to bring CanPX Corporation into operation in order to enhance the visibility of trading information.

The OSC will assess the voluntary CanPX arrangement to ensure that it promotes transparency and benefits both investors and issuers.

For more information, please call **Howard I. Wetston, Q.C., Vice-Chair**, (416) 593-8206 or **Randee Pavalow, Manager, Market Regulation**, (416) 593-8257.

22 OSCB April 16, page 2261

SEDAR Amendments

The CSA has proposed amendments to National Instrument 13-101 on SEDAR (System for Electronic Document Analysis and Retrieval) as well as to the SEDAR Filer Manual. Among the key changes:

- The SEDAR Filer Manual currently permits electronic filing of documents in several different file formats, including specific versions of Corel WordPerfect, Microsoft Word and PDF format (Portable Document Format). Because filings made in these formats often cannot be viewed correctly, it is proposed to require all electronic filings to be made in PDF format only. This likely would become effective in the summer of 1999.

"It is proposed to require all electronic filings to be made in PDF format."

- The SEDAR Instrument came into force on January 1, 1997. Shortly afterwards, the Commission adopted National Instrument 14-101 on Definitions, which contains definitions of commonly used terms as well as various interpretive provisions. The proposed amendments to the SEDAR Instrument eliminate certain definitions and other items contained in the Definitions Instrument because they are no longer needed in the SEDAR Instrument.

- Another proposed change would incorporate by reference the most recent version of the Filer Manual in the SEDAR Instrument to avoid the need to amend the Instrument each time a new version of the Manual is released.

For more information, please call **Karen Eby, SEDAR Project**, (416) 593-8242

22 OSCB Feb. 26, page 1279

CANADIAN SECURITIES ADMINISTRATORS

A summary of recent national initiatives from the Canadian Securities Administrators (CSA). The CSA is comprised of the thirteen securities regulators of the provinces and territories of Canada.

Spring Meeting in Toronto

At its Spring meeting in Toronto, the CSA agreed to form a staff committee to review the stock exchange restructuring plan announced in March to ensure that investors' interests are protected. The plan calls for The Toronto Stock Exchange to become Canada's only senior equities market; the Montreal Exchange to specialize in derivative investment products; and the Vancouver and Alberta stock exchanges to create a Canadian junior equities market.

During the meeting, the CSA Chairs also approved a strategic plan covering 1999-2001. One element of the plan is implementing a system for existing, alternative and emerging trading systems. The Chairs reviewed the progress made on developing a framework for the regulation of trading systems, including ATSs, in the Canadian capital markets. Proposed rules, policies and other materials on the proposed framework will be published this summer.

For more information, please call **Kathleen Finlay, Manager, Project Office,** (416) 593-8125.

Y2K Update: Securities Industry Testing Successful

As part of their commitment to assisting the capital markets in preparing for Y2K, the Canadian Securities Administrators has moved forward on a number of initiatives.

"If we were grading the industry, we would have to give them full marks." **David Brown**

- The CSA has published the first in a series of newsletters updating market participants on Year 2000 issues and events. The first issue of the newsletter reviewed testing, contingency planning initiatives, enforcement action, website reporting and other topics.
- May 28–June 10. The securities industry successfully completed testing on a variety of transactions, including trading, order entry, settlement, clearance and validation processes. For more information about the tests, visit the Y2K pages on the OSC website at *www.osc.gov.on.ca.*

- The Canadian securities regulators are stepping up their review of Year 2000 disclosure by reporting companies, following the CSA staff Report published in January. As part of its review, staff in several commissions are reviewing selected annual information forms or similar documents. As well, staff will monitor the filings of some of the reporting companies that were the subject of the original Year 2000 disclosure review report.

- The CSA issued a news release calling for contingency planning by market participants. The release noted that the CSA "is prepared to take regulatory action to avert or minimize disruption to the operation of the Canadian capital markets if it becomes evident that a market participant will not be in a position to operate smoothly at the turn of the century." Planning efforts by participants will complement the work of the CSA-led industry task force created in November 1998.

For more information, please call **Mark Conacher, Director, Corporate Relations** (416) 593-8073 or **Randee Pavalow, Manager, Market Regulation,** (416) 593-8257

Study Compares Seg Funds and Mutual Funds

The CSA and the Canadian Council of Insurance Regulators (CCIR) have issued a report comparing the regulation and structure of segregated funds and mutual funds.

The CSA regulates mutual funds and the CCIR regulates individual variable insurance contracts (IVICs) and the segregated funds which determine the value of an IVIC. Both seg and mutual funds are collective or pooled investments offering similar opportunities to investors.

The study is a first step towards harmonizing the CSA's and CCIR's regulatory regimes and offering similar investor protections for these similar products. A joint regulatory/industry working group prepared the report, which features an extensive comparative table.

The table compares the products':

- Legal form and structure, operators and service providers;
- Governing regulation and their central regulators, as well as the governing regulation and the central regulators of their operators and service providers;
- The rights of purchasers;
- Their method of marketing and disclosure to purchasers; and
- The manner in which they are distributed to purchasers.

The study is available on the OSC website *www.osc.gov.on.ca,* or for more information, please call **Rebecca Cowdery, Manager, Investment Funds**, (416) 593-8129

22 OSCB May 7, page 2761

CSA Supports MFDA

To support the start-up of the Mutual Fund Dealers Association (MFDA), self-funded members of the CSA – the Alberta, British Columbia and Ontario Securities Commissions – are guaranteeing a line of credit of up to $12 million to carry it through until it begins generating its own revenue.

The CSA (other than Quebec) has also agreed to make rules that will require all mutual fund dealers and securities dealers to join a recognized self-regulatory organization (SRO).

"The three commissions have agreed to guarantee the MFDA's indebtedness under its credit facility."

The CSA believes that regulation of the mutual fund industry must keep pace with its importance to the Canadian financial market and to Canadians. A crucial aspect of mutual fund regulation is to ensure that those who sell mutual funds to the public have appropriate licences to conduct such activity and are held to appropriate standards of proficiency, solvency and sales practices. The dramatic increase in the numbers of mutual fund dealers and salespersons has made it literally impossible for the securities regulators to perform reviews of the financial affairs and of the sales practices of mutual fund dealers on a regular basis.

The CSA members believe that industry self-regulation is necessary in order to maintain proper conduct of mutual fund distributors and to ensure that investors' confidence in mutual fund investing is not misplaced. The CSA has been working with the Investment Dealers Association of Canada and the Investment Funds Institute of Canada since early 1997 to facilitate the establishment of a self-regulatory organization for distributors of mutual funds in Canada. The establishment of the MFDA is the culmination of that work.

CSA staff are participating in the rule-making committees of the MFDA to ensure that appropriate consideration is given to regulatory concerns related to mutual fund distribution.

For more information, please call **Rebecca Cowdery, Manager, Investment Funds**, (416) 593-8129.

22 OSCB April 9, page 2133

Financial Planning

The CSA hopes to publish for comment a draft rule on financial planning minimum proficiency by the end of July. This rule will be accompanied by an interpretive notice indicating the intended scope of the rule and how the transitional grandfathering decisions will be made for all registrants.

The draft rule would require any registrant who wants to offer financial planning or other comprehensive integrated financial advice relating to an individual's present and future financial circumstances to pass a common examination and to meet supervised experience requirements. The common exam is being developed under the aegis of an industry group representing a cross section of financial sector product and service providers and industry educators. It is comprised of the CEOs of the Investment Dealers Association of Canada, the Investment Funds Institute of Canada, the Canadian Bankers Association and the Canadian Association of Insurance and Financial Advisors.

The common exam is now in the early stages of development by a consultant working directly with industry educators following an accepted scientific process for the design of exams to test expertise. As the process moves to the stage of exam question design and testing, participation from the wider financial planning community will be necessary to ensure that the exam is appropriate in difficulty, focus and pass/fail level.

The industry group is preparing joint papers on collateral continuing education, supervised experience requirements and practice standards which will provide input for the CSA in determining grandfathering criteria.

The Financial Services Commission of Ontario is coordinating a national approach among insurance sector regulators to implement the common exam requirements in cooperation with the CSA with the exception of Quebec, where financial planning is already regulated.

For more information, please call **Julia Dublin, Senior Legal Counsel, General Counsel's Office**, (416) 593-8103.

Joint Forum of Financial Market Regulators

Representatives of Canada's securities, insurance and pension regulators are working together to eliminate gaps among their systems of regulating financial products and services in Canada. Key areas targeted for review are the regulation of segregated funds and mutual funds, distribution structures, financial planning and information sharing.

The Joint Forum was formed in January to discuss issues of common interest among Canadian securities, insurance and pension regulators arising from the growing integration of the financial services sector.

The Joint Forum reviewed a comparative study of segregated fund and mutual fund regulation done by a task force of representatives of the Canadian Securities Administrators, the Canadian Council of Insurance Regulators and the insurance and mutual fund industries (see page 6). The Joint Forum agreed to work to improve the respective regulation of segregated funds and mutual funds in the Canadian financial markets to enhance consumer protection.

The Joint Forum of Financial Market Regulators includes representatives of the Canadian Securities Administrators, the Canadian Council of Insurance Regulators and the Canadian Association of Pension Supervisory Authorities. The mandate of the Joint Forum is to coordinate and streamline the regulation of products and services in the Canadian financial markets.

For more information, please call **Kathleen Finlay, Manager, Project Office**, (416) 593-8125.

ENFORCEMENT

The following are summaries of recent enforcement proceedings and hearings before the Commission. For more information please call the OSC at (416) 593-8314.

John Felderhof & Bre-X Minerals Ltd.

Charges laid for insider trading and misleading press releases

On May 11, 1999, Commission Enforcement staff laid an Information in the Ontario Court of Justice against John Bernard Felderhof, the former Vice-Chairman of Bre-X Minerals Ltd., charging Felderhof with eight counts of violating Ontario securities law.

Four counts in the Information allege that, in the period April 24, 1996 to September 10, 1996, Felderhof sold approximately 2,720,500 shares of Bre-X for approximately $83.9 million with knowledge of a material fact pertaining to rights of Bre-X in relation to the Busang properties that had not been generally disclosed (also known as "insider trading").

A further four counts in the Information allege that in the period June 20, 1996 to February 17, 1997, Felderhof authorized, permitted or acquiesced in Bre-X issuing press releases containing resource calculations for the Central and Southeast Zones of the Busang properties that in a material respect were misleading or untrue, contrary to section 122 of the Ontario Securities Act. As a strict liability offence, these charges do not require the Commission to prove whether Felderhof knew the resource calculations were misleading or untrue.

Mr. Felderhof (or his counsel or agent) will be required to appear before the Ontario Court of Justice at the Old City Hall, Toronto, Ontario at 9:00 a.m. on June 15, 1999 and thereafter as required by the Court.

Steve Stavro, Brian Bellmore, J. Donald Crump and Maple Leaf Sports & Entertainment Ltd.

Settlement reached for failure to provide adequate disclosure.

The Ontario Securities Commission (the "Commission") announced on March 29, 1999 that it had approved a settlement reached by staff of the Commission in a proceeding brought against Maple Leaf Sports & Entertainment Ltd. (formerly Maple Leaf Gardens, Limited), Steve A. Stavro, Brian P. Bellmore and J. Donald Crump.

During the period in question, Maple Leaf Gardens Ltd. was a reporting issuer with the estate of the late Harold Ballard holding a controlling interest. Steve Stavro, in addition to being the executor of Mr. Ballard's estate, was the Chief Executive Officer, a director and a member of the executive committee. In 1991, Mr. Stavro was granted permission to acquire the estate's interest in Maple Leaf Gardens Ltd. Brian Bellmore and J. Donald Crump were also director's and members of the executive committee. Maple Leaf Gardens Ventures Ltd., a private company, was created in 1994 for the purpose of acquiring Maple Leaf Gardens Ltd. Mr. Stavro controlled 51 percent of Maple Leaf Gardens Ventures.

Staff of the Commission had alleged that the Offering Circular and Directors' Circular issued in connection with the takeover of Maple Leaf Gardens, Limited in April of 1994 were deficient. In the Statement of Facts accompanying the Settlement Agreement, it was agreed that the respondents had been aware of the potential for a significant increase in television revenues. During the takeover, the respondents failed to comment on a valuation method used for calculating these revenues in meetings held with the firms retained to set a valuation for the takeover. The valuation method used by these firms had resulted in a substantially more conservative projection of revenues.

Under the terms of the settlement, Maple Leaf Sports & Entertainment Ltd. will pay a total of $1.6 million to the Commission. Of that, $1.1 million will be allocated by the Commission to third parties to be used for purposes that will benefit investors in Ontario. The Commission has not yet determined the purposes to which the funds will be applied. The remaining $500,000 represents a contribution towards the costs of staff's investigation of this matter. The corporation was also reprimanded by the Commission. In addition, Messrs. Stavro, Bellmore and Crump have agreed, for a period of 18 months, not to act as a director of a reporting issuer without prior approval of the Commission.

In approving the settlement, Vice-Chair Howard Wetston, speaking for a three-Commissioner panel, noted that the mandate of the Commission is to protect investors in Ontario and confidence in the integrity of the capital markets. He observed that disclosure is "not simply a question of business process or judgment, but a fundamental underpinning of the regulation of the capital markets." He also noted that they were in a position to ensure, but did not, that the disclosure issued in connection with the takeover bid contained information regarding management's expectations about substantial increases in broadcast revenues that were likely to occur.

The Commission held that in a proposed transaction relating to a takeover bid, particularly where the offer is developed by insiders who will become part of the "buy" side of the transaction, there is an obligation to ensure that the disclosure to the buy side is also made to the "sell" side in a fair and complete way.

David Singh, Jeffrey Lipton, Infinity Investment Counsel Ltd.

Suspensions for misleading advertisement following an earlier settlement

On January 12, 1999, Enforcement staff alleged that David Singh, Jeffrey Lipton and Infinity Investment Counsel Ltd. had caused or permitted an investment by two Infinity mutual funds that contravened Ontario securities law and was contrary to the public interest.

On January 19, 1999, the Commission approved a settlement agreement which imposed sanctions upon Mr. Singh, Mr. Lipton and Infinity Investment Counsel. The following day, Infinity Investment Counsel published an advertisement in the business press which made reference to the settlement agreement and the investment which was the subject of the proceeding. By Notice of Hearing and Statement of Allegations issued on February 10, 1999, staff of the Commission alleged that Mr. Singh and Mr. Lipton permitted Infinity Investment Counsel Ltd. to publish that advertisement which contra-

vened both the settlement agreement and the prohibition in National Policy 39 against misleading sales communications.

The allegations against Infinity Investment Counsel and Mr. Singh were resolved by way of settlement agreements approved by the Commission on March 2, 1999. By the terms of those settlement agreements, the registration granted to Mr. Singh under Ontario securities law in respect of Fortune Investment Corporation was suspended for a period of three months and Mr. Singh further agreed to withdraw his application for registration in respect of Fortune Financial Corporation and not to reapply for registration for three months. Infinity Investment Counsel was reprimanded by the Commission.

At the hearing, Mr. Singh gave a statement to the Commission in which he accepted full responsibility for the advertisement and apologized to the Commission and its staff for publication of the advertisement. The Commission indicated that it considered the matter to be one of a most serious nature and an important element in accepting the settlement was that Mr. Singh acknowledged to the Commission that he understood the serious nature of the matter and accepted responsibility for his conduct.

Mr. Lipton entered a settlement agreement with staff which was considered by the Commission on April 23, 1999. In approving the settlement agreement, the Commission ordered that the registration of Mr. Lipton be suspended for one month effective July 1, 1999. This one-month suspension was in addition to a three-month suspension, effective April 1, 1999, imposed by the Commission on January 19, 1999 arising from the earlier proceeding.

James T. Riley

Failure to file insider trades.

On June 1, 1999, the Ontario Securities Commission (the "Commission") issued its decision and reasons in the matter of James T. Riley. In this proceeding which was heard by the Commission on May 27, 1999, staff of the Commission alleged that James T. Riley, a director and the president of York Bay Capital Group Inc., failed to file the reports required by Ontario securities law in respect of his change of ownership of York Bay shares while an insider of that corporation.

The Commission found that Mr. Riley had failed to file reports for 108 purchase or sale transactions contrary to the reporting requirements of the Securities Act.

The Commission determined that a number of mitigating factors were present in Mr. Riley's case including that he made no attempt to conceal his transactions and the fact that he co-operated in the investigation. The Commission determined that the appropriate sanction was to reprimand Mr. Riley.

Einar Bellfield

Charges filed for unregistered activity

The Ontario Securities Commission announced on April 9, 1999 that it has laid charges of trading in securities without being registered in the Ontario Court of Justice (Provincial Division) against Einar Bellfield. The investigation that resulted in the laying of these charges was conducted under the auspices of the Securities Enforcement Review Committee ("SERC"), a committee formed to investigate multi-jurisdictional securities infractions. In particular, this investigation involved the collaboration of the RCMP, the OPP and the Ontario Securities Commission.

On February 5, 1991, the Commission removed Bellfield's exemptions until January 31, 1999. The charges allege that in 1995, Bellfield traded in accounts at three Ontario brokerage firms while the exemptions were not available to him and he was not registered; therefore, it is alleged that he contravened the Securities Act.

Dax Sukhraj

Settlement following failure to honour a representation to Commission staff

On March 11, 1999 the Ontario Securities Commission approved a settlement agreement between Commission staff and Dax Sukhraj and ordered that he be reprimanded for failing to honour a representation made to Commission staff in December 1997. Sukhraj admitted in the agreement that his conduct was contrary to the public interest and that he was aware that Commission staff had relied on his representation.

Sukhraj is an officer, director and majority owner of Keybase Investments Inc., which is registered as a mutual fund dealer under the Securities Act. In the settlement agreement, Sukhraj acknowledged his regret in taking the position that he would not fulfill his representation that Keybase Investments would indemnify three elderly clients. He further noted that, with the benefit of advice and reflection, he caused Keybase Investments to voluntarily enter into an indemnity agreement with the three elderly clients on February 22, 1999.

Both Commission staff and counsel for Sukhraj submitted before the Commission that Sukhraj's recent actions should be considered as a mitigating factor in respect of the Order for a reprimand sought against him.

In approving the settlement agreement, the Commission noted in its Reasons that " . . . [Sukhraj] did provide a clear and unequivocal representation to the staff of the Commission, and that representation was one which he later failed to fulfil. This raises the question of what is the appropriate standard that is expected of a registrant who provides a representation to the staff of the Commission . . . A representation to the Commission cannot, and should not be considered as just a commercial representation."

Tactman Investments (Canada) Inc., and Tanrich Investment Consultant (Overseas) Ltd.

Permanent Cease Trade Order issued

On January 26, 1999, the Ontario Securities Commission (the "Commission") issued an order (the "Order") pursuant to section 127(1) of the Securities Act (the "Act") that all trading in securities, including foreign exchange contracts, issued by Tactman Investments (Canada) Inc. ("Tactman") and Tanrich Investment Consultant (Overseas) Ltd. ("Tanrich") cease permanently. A temporary cease trading order against Tactman and Tanrich had been in place since November 1, 1995 as Tactman and Tanrich were involved in the sale of spot foreign exchange contracts to the public without registration and without filing a prospectus with the Commission. Neither Tactman nor Tanrich appeared at the hearing on January 26, 1999 to oppose the Order.

Glen Harvey Harper, Golden Rule Resources Ltd.
Charges of insider trading laid
The Ontario Securities Commission announced on March 23, 1999 that it had laid charges in the Ontario Court of Justice (Provincial Division) against Glen Harvey Harper, the President, CEO and Chairman of Golden Rule Resources Ltd., including two counts of trading in shares of Golden Rule with knowledge of material facts which were not generally disclosed (also known as "insider trading"). The charges allege that in the period January 3, 1997 to May 6, 1997, Harper sold approximately 424,702 shares for $4,042,469 of Golden Rule, which during the material time was listed and posted for trading on The Toronto Stock Exchange.

Visions Financial Group Inc.
Reprimand issued and conditions imposed after a failure to file audited financial statements
At a hearing on May 13, 1999, the Ontario Securities Commission approved a settlement agreement entered into between staff of the Commission and Visions Financial Group Inc. "Visions", a mutual fund dealer and limited market dealer. In a Notice of Hearing and Statement of Allegations issued on May 3, 1999, staff of the Commission alleged that Visions had failed to deliver its audited financial statements within ninety days of its financial year-end, contrary to Ontario securities law. Visions had previously failed to comply with reporting requirements. The Commission ordered that certain terms and conditions be imposed on Visions' registration, including requirements that Visions deliver monthly financial statements to the Commission, and that it undergo an audit as at June 30, 1999 and report the results of that audit to the Commission. In addition, the Commission reprimanded Visions.

(Update on Take Overs/M&As)

- consulting parties and advising the Commission in respect of s.127 proceedings, particularly in the area of take-over bids, issuer bids and shareholders rights plans;
- engaging in pre-filing discussions with counsel respecting the foregoing;
- handling public inquiries and complaints relating to take-over/issuer bids, going private transactions and related party transactions; and
- serving as a resource to the Commission and staff in respect of related M&A matters.

Service Guidelines and Turnaround
The M&A team recognizes that M&A transactions are time sensitive and therefore frequently require expeditious regulatory review of a transaction or matter. Users of the M&A team's services should keep the following in mind:

- Faxing your application to the Director, Take-over/Issuer Bids, Mergers & Acquisitions, as soon as you are ready to file it formally with the Secretary will enable the team to start analysing your request as soon as possible. The fax number for the M&A team is (416) 593-8177.

The quality and completeness of your application will have an impact on staff's review time. In particular, applications should deal squarely with the issues at hand, and cite relevant precedents where available.

Policy
The M&A team is responsible for policy advice at the Commission in the area of take-over/issuer bids, going private transactions and related party transactions.

At present, the M&A team will be focusing on the replacement of OSC Policy 9.1 with Proposed Rule 61-501 and Proposed Companion Policy 61-501CP (the "Proposed Rule and Policy"). The Proposed Rule and Policy were published for comment on January 22, 1999. Only three comment letters have been received to date. In light of the importance of the Proposed Rule and Policy, the cut-off time for receipt of comment letters has been extended to May 31, 1999.

Pending effectiveness of the Proposed Rule and Policy, staff of the M&A team will continue to administer OSC Policy 9.1. In considering applications for relief under OSC Policy 9.1, staff will consider submissions based on the Proposed Rule and Policy, not as a substitute for, but in addition to, submissions made under OSC Policy 9.1.

In the longer term, the M&A team will be focusing on the need for legislative reform. The last substantial revision of Part XX of the Act occurred in 1987.

Harmonization
M&A transactions frequently know no borders. At the national level, the M&A team is having discussions with staff of the other provincial securities commissions with a view to developing protocols to minimize the regulatory complexity faced by participants in M&A transactions that involve several Canadian provinces.

Monitoring and Compliance
The dedication of resources at the OSC to the M&A area and M&A team, in particular, has allowed the M&A team to commence a pro-active monitoring and compliance program.

"Where non-compliance (with Ontario securities law) is identified follow-up enforcement action could be recommended."

The M&A team regularly reviews press releases, the financial press and other material to determine whether market participants are complying with Ontario securities law and policies. Where non-compliance is identified, follow-up enforcement action could be recommended.

Recent Transactions
Since its creation, the M&A team has been involved in a number of M&A transactions and issues. Among these are:

- Partial Insider Bid for Cambridge Shopping Centres Limited
- AEC Bid for Pacalta and application made by AEC to cease trade a tactical poison pill adopted by Pacalta's board, without shareholder approval, in the face of AEC's bid.
- Westlinks (see article, page 3)

For more information, please call **Stan Magidson, Director Take Over Bids, Mergers & Acquisitions Team** (416) 593-8124

Beyond Product Sales: Considerations Other than the Bottom Line.

Remarks by David A. Brown, OSC Chair

The following excerpts are from a speech delivered by David A. Brown, OSC Chair, at the Canadian Centre for Ethics & Corporate Policy in Toronto on April 1st, 1999.

I want to spend the next 20 minutes discussing the challenges to exacting higher standards of ethical behaviour from those who are in positions of responsibility towards investors, together with some thoughts on what can be done about it....

"As regulators, we become concerned with the growing emphasis in accounting firms on the generation of fees from the sale of consulting services."

Aggressive Accounting Practices
As regulators, we become concerned with the growing emphasis in accounting firms on the generation of fees from the sale of consulting services, in most firms a larger, faster growing source of revenue than fees for conducting the audit. We wonder whether it is becoming increasingly difficult for auditors to say "no" – in the face of pressure both from their clients and their consulting colleagues...

Misrepresentation of Financial Services Being Provided
It is a matter of public record that the CSA is working to establish educational and proficiency standards for individuals who hold themselves out as providing financial planning services. This initiative grew out of our growing concern that people who are essentially product sales persons, are advertising their services as financial planners. Clearly, there is a certain cachet to a mutual fund or securities salesman describing himself as a financial planner. Although potential customers might be more inclined to engage the salesman's services in anticipation of receiving an overall financial plan, the salesman's motivation is much different – to sell more products. By promising to deliver a financial plan, the salesman is inviting reliance by his customers on the implied promise that there will be something more in his recommendations than merely the desire to sell products for which the salesman will receive a commission...

"Clearly, there is a certain cachet to a mutual fund or securities salesman describing himself as a financial planner."

Investor Education Seminars

We have received a number of complaints alleging that securities salespeople have lured potential customers into hearing a sales pitch by offering free investor seminars. Under the guise of educating investors through the opportunity to hear from a celebrity investment guru, investors are induced to associate the investment opportunity being offered by the sponsor of the seminar with the relatively credible reputation of the "independent" lecturer. We have specific rules requiring the disclosure to all participants in such seminars of the identity of their sponsors…

Insider Trading and Selective Disclosure

Finally, I suspect there is no activity which is so destructive of confidence in the market than that of insider trading, more precisely trading on material information that has not been generally disclosed. Everyone would agree that such activity needs to be high on the regulators' enforcement tar-

"There is no activity which is so destructive of confidence in the market than that of insider trading."

get list and, indeed, investigations of trading by insiders apparently possessed of non-public material information comprises a significant part of the work of our Enforcement Branch. Attention has been focused elsewhere recently, however, on a practice which has been dubbed "selective disclosure": the practice of corporate officers discussing corporate affairs during closed conference calls with analysts…

In a recent decision of the Commission, the panel commented on the issue of tipping and the problems raised by selectively disclosing information:

"It would appear that some corporate officers see the maintenance of good relations with analysts as being more important than ensuring equality of material information among shareholders… in general, we view one-on-one discussions between an officer of a reporting issuer and an analyst as being fraught with difficulties."

We now operate in a world where there is tremendous economic significance not only on the access to information but on the timing of such access. Having information a few minutes before it becomes known to the market can be a significant advantage to a recipient – to the detriment of the market.

In its 1997 report on "Responsible Corporate Disclosure" delivered to the TSE, the Allen Committee addressed the issue of selective disclosure. Paragraph 7.12 of the report reads as follows:

"The Committee remains concerned that private meetings with analysts and professional investors have resulted in selective disclosure of information that should have been disclosed on a general basis. Quite apart from any questions of compliance with securities laws, this causes unfairness in the marketplace."

"…We need securities industry leaders to make it clear that strong business values and high ethics are essential to participate in the investment business."

…We need securities industry leaders to make it clear that strong business values and high ethics are essential to participate in the investment business. Reputations, careers, futures and, ultimately, profitability may well turn on ethical conduct. Such conduct must be directed from the top. This calls for a higher standard than mere compliance to the bottom line; mere compliance to the minimum standards prescribed by laws and regulations.

22 OSCB April 9, page 2125

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If you wish to be on the mailing list for *Perspectives*, please contact us at:

Perspectives
Ontario Securities Commission
Corporate Relations Branch
20 Queen St. West
Toronto, M5H 3S8
(416) 593-8117